IN THE HIGH COURT OF PUNJAB AND HARYRNA AT CHANDIGARH

F.A.O.No.157-M of 2003
Date of Decision:- 20.09.2006

Jagtar Singh ....Appellant.

through
Mr.B.R.Mahajan, Advocate

vs.

Kulwant Kaur ....Respondent

through
None.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT

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SURYA KANT, J.

This appeal has been preferred by the husband, whose divorce petition under Section 13 (1) (i-a) and (i-b) of the Hindu Marriage Act, 1955 has been dismissed by the learned Additional District Judge, Amritsar vide judgment and decree dated 30.4.2003.

The marriage between the parties was solemnized on 10.12.1993. They resided together and cohabited as husband and wife and from the wedlock a male child was born on 5.12.1994. Alleging, however, that the respondent has been treating the appellant with cruelty and that too of such a magnitude that it has became dangerous for the appellant to live with the respondent as she is very short tempered and is also a case of mental disorder as she has been getting medical treatment from the Mental Hospital at Amritsar due to which she is neither able to look after herself nor their minor child, that the appellant filed the present divorce petition. It

was also averred that the respondent is schizophrenic and cannot differentiate between wrong and right, her mental faculty is below average; she cannot look-after even herself what to talk of their minor child and is unable to cook food or to do other domestic households. The appellant further averred that the respondent has deserted him for a continuous period of not less than four and a half years since 10.8.1996, therefore, he is entitled to get divorce on the ground of desertion also. In this manner, the appellant sought a decree of divorce on the grounds of cruelty, desertion and the respondent being a case of mental disorder.

The above-stated petition was contested by the respondent, inter alia, with a preliminary objection that earlier also the appellant had filed a divorce petition on the ground of cruelty and that the respondent is suffering from mental disorder which was, however, dismissed in default on 17.8.2000, therefore, the second petition is barred by *res judicata*. She also denied the allegations regarding causing of any cruelty or of being a case of mental disorder. The respondent has made counter-allegations that the appellant has been subjecting her to cruelty for not bringing sufficient dowry.

On the basis of the pleadings, the learned Additional District Judge framed following issues:-

> "1) Whether the respondent has treated the petitioner with cruelty?OPP.
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> 2) Whether the respondent has deserted the petitioner for a period of more than two years continuously preceding the filing of the petitioner? OPP.

3) Whether the respondent is suffering continuously from mental dis-order of such a kind that the petitioner cannot reasonably be expected to live with her? OPP.

4) Relief."

While deciding issue Nos.1 and 2, the learned trial Court has categorically held that "the principle of *res judicata*" is also applicable to the facts of the present divorce petition as the ground of cruelty was specifically pleaded by the appellant in his previous divorce petition (Ex.R1) which was dismissed vide order dated 17.8.2000 (Ex.R-2). The learned trial Court, however, has re-considered the ground of cruelty on merits and on appreciation of the entire evidence, it has held that the allegations made by the appellant of treating him with cruelty are false. As regard to the allegation that the respondent deserted him, the trial Court has held that it is the appellant, who has thrown her out of the matrimonial home, therefore, the said plea too was liable to be rejected.

In respect of the third ground, namely, as to whether the respondent is suffering from mental disorder or not, the learned trial Court has held that firstly the medical record produced by the appellant i.e. Ex.P1 pertains to one Kulwinder Kaur and not to Kulwant Kaur-the respondent. It has been observed that there is no convincing evidence on record to suggest that the respondent is also known by the name of Kulwinder Kaur. The learned trial Court has further held that in the absence of any cogent evidence, it cannot be said that the respondent is suffering from mental disorder. The trial Court has also referred to the binding judicial precedents wherein it has been held that mere branding of a spouse as

schizophrenic is not sufficient unless the degree of the mental disorder is such which may render it impossible for the other to live together. With these conclusions, the divorce petition has been dismissed.

Aggrieved, the husband has preferred this appeal.

I have heard Shri B.R.Mahajan, learned counsel for the appellant at length and perused the records.

It is the conceded position that in the previous divorce petition (Ex.R-1), the appellant had sought divorce on the ground of 'cruelty' and “mental disorder” of the respondent. In support of both the grounds, the evidence was also led by him. Dr.Ravinder Mohan Sharma, who has appeared as PW-1 in the present case had appeared as PW-2 in the previous divorce petition. The said divorce petition, however, was dismissed in default on 17.8.2000 (Ex.R-2). In this view of the matter, the second petition filed by the appellant to the extent of seeking divorce on the ground of 'cruelty' and 'mental disorder' of the respondent, is clearly barred by Order 9 Rule 9, CPC.

Independent to that, the evidence led by the appellant in the present case in support of the above stated grounds may also be referred to and re-appraised.

In addition to his own deposition, the appellant has relied upon the statements made by his mother Jaswant Kaur (PW-3) and Ex-Sarpanch of the village Bachittar Singh (PW-4). All of them primarily lay emphasis on the alleged abnormal behaviour of the respondent in order to suggest that she is suffering from some kind of mental ailment. There are hardly any specific instances and that too of much credence on the basis of which

any conclusive opinion that the respondent ever treated the appellant with cruelty, can be formed.

As regard to the ground of mental disorder, the alleged medical report (Ex.P-1) pertains to one Kulwinder Kaur and not to Kulwant Kaur-the respondent. Dr.Ravinder Mohan Sharma, PW-1 has admitted in his cross-examination that he cannot identify the respondent, who was present in Court, as the person to whom the treatment vide Ex.P-1 was given. Thus, no reliance can be placed upon the medical report (Ex.P1). Otherwise also, the said medical record relates to a person suffering from Schizophrenia. There is not even a whisper that the degree of 'mental disorder' was so high that the spouse of the patient could not be reasonably expected to live with her. The medical evidence, thus, miserably fails to substantiate the allegation made by the appellant.

As regard to the last ground, namely, that the respondent has deserted the appellant, the same appears to have been taken only for the maintainability of the second divorce petition. The evidence on record clearly establishes that it is the appellant, who had thrown out the respondent from her matrimonial home and he has never been ready and willing to live with her. Contrary to it, it is the pleaded case of the appellant that if he were to live with the respondent, the life of their child and his own life would be endangered. The appellant, thus, cannot be permitted to blow hot and cold in the same breath and cannot be permitted to take advantage of his own wrongs. There is no willful abandonment of matrimonial home by the respondent, who, rather, has been forced by the appellant to live separately.

Consequently and for the reasons stated above, I do not find any merit in this appeal which is accordingly dismissed with the cost of Rs.3000/-

September 20, 2006 **(SURYA KANT)**
poonam **JUDGE**